

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

PHILIP J. CHARVAT and SABRINA  
WHEELER, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

PLYMOUTH ROCK ENERGY, LLC,  
ENERGY ACQUISITIONS GROUP, LLC,  
and JOHN WILLIAM VAN TUBERGEN,

Defendants.

No. 2:15-cv-04106-JMA-SIL

**DEMAND FOR JURY**

**CLASS COUNSEL'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES,  
COSTS, AND SERVICE AWARDS**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of the Motion for Attorneys' Fees, Costs and Service Awards, Class Counsel will and hereby do move this Court, before the Honorable Joan M. Azrack, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, on January 8, 2018, at 2:00 p.m. for an order granting Class Counsel's Motion for Attorneys' Fees, Costs and Service Awards.

Class Counsel bring their motion for fees pursuant to Fed. R. Civ. P. 23(h), which permits an award of reasonable attorney's fees and nontaxable costs as authorized by law or the parties' agreement. Plaintiffs also rely on *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005), and *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000), which permit attorneys to seek reasonable

fees when they create a common fund for the benefit of a class. Class Counsel seek reimbursement for their reasonable litigation costs pursuant to *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Class Counsel seek reasonable incentive awards for the named Plaintiffs based on *Sewell v. Bovis Lend Lease, Inc.*, No. 09 CIV. 6548 RLE, 2012 WL 1320124, at \*14 (S.D.N.Y. Apr. 16, 2012); *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 CIV. 8141 DAB, 2012 WL 345509, at \*6 (S.D.N.Y. Feb. 2, 2012); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Ikuseghan v. Multicare Health Sys.*, No. C14-5539 BHS, 2016 WL 4363198, at \*3 (W.D. Wash. Aug. 16, 2016); and *Hageman v. AT & T Mobility LLC*, No. CV 13-50-BLG-RWA, 2015 WL 9855925, at \*4 (D. Mont. Feb. 11, 2015).

Dated: October 5, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on October 5, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 5th day of October, 2017.

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